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13 May 2003

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 (SECTIONS 78 AND 174)
APPEALS BY MR PATRICK SHERIDAN, MR MICHAEL SHERIDAN, MS MARY SHERIDAN, MR JIM McCARTY, MS BRIDGET QUILLIGAN, MS NORA EGAN, MR DAN SHERIDAN, MR BARNEY COYLE, MS MARGARET McCARTY, MS NORA BERRY, MS NORA SLATTERY, MR DAVID SHERIDAN AND THE GYPSY WELFARE COMMITTEE -
LAND AT DALE FARM, OAK LANE, CRAYS HILL, BILLERICAY, ESSEX
APPLICATION No: 02/00558/FULL

1. I am directed by the First Secretary of State to say that consideration has been given to the report of the Inspector, Mr Felix Bourne, BA (Hons) Solicitor Legal Associate RTPI, who held a public local inquiry on 8, 9, 10, 14 and 22 January 2003 into:

Appeals 1 and 2 made by Mr Patrick Sheridan and Mr Michael Sheridan under section 174 of the Act against an enforcement notice (Notice 1) issued by Basildon District Council. The breach of planning control as alleged in the notice is without planning permission, the change of use of land for the siting of caravans and other mobile structures and their use for residential purposes on the land east of Oak Lane, south of Oak Road, Crays Hill, Billericay, Essex (Site 1). The requirements of the notice are to:

a) Stop using the caravans for residential purposes; and
b) Remove all caravans and other mobile structures from the site.

The period for compliance with the requirements is three months.

Mr Patrick Sheridan's appeal is on the grounds set out in section 174(2)(g) of the 1990 Act. Mr Michael Sheridan's appeal is on grounds (a) and (g). Since the prescribed fees have not been paid within the specified period in relation to Mr Patrick Sheridan's appeal, the deemed application for planning permission does not fall to be considered in relation to that appeal.

Appeal 3 made by Mr Michael Sheridan under section 174 of the Act against an enforcement notice (Notice 2) issued by the same Council. The breach of planning control as alleged in the notice is without planning permission, the construction of a brick built building in the approximate position shown coloured blue on the plan attached to the enforcement notice, and a bricked in portacabin in the approximate position shown coloured brown on the said plan on Site 1. The requirements of the notice are to:

a) Demolish the building coloured blue on the said plan; and
b) Demolish the brickwork enclosing the portacabin coloured brown on the said plan and remove all resultant debris from the land.

The period for compliance with the requirements is three months.

The appeal is on the grounds set out in section 174(2) (f) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the deemed application for planning permission does not fall to be considered.

Appeal 4 made by Ms Mary Sheridan under section 174 of the Act against an enforcement notice (Notice 3) issued by the same Council. The breach of planning control as alleged in the notice is without planning permission, the unauthorised laying of hardcore and road chippings to form hardstandings on the land shown coloured brown on the plan attached to the enforcement notice, on Site 1. The requirements of the notice are to break up the hardcore and road chippings forming hardstandings and remove all resultant debris from the land.

The period for compliance with the requirements is three months.

The appeal is proceeding on the grounds set out in section 174(2)(g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the deemed application for planning permission does not fall to be considered.

Appeals 5 to 11 made by Mr Jim McCarthy, Ms Bridget Quilligan, Ms Nora Egan, Mr Dan Sheridan, Mr Barney Coyle, Ms Mary Sheridan and Ms Margaret McCarthy under section 174 of the Act against an enforcement notice (Notice 4) issued by the same Council. The breach of planning control as alleged in the notice is without planning permission:

a) The unauthorised change of use of the land for the deposit of hardcore and road scalpings; and
b) The unauthorised change of use of the land for the siting of caravans

on the land at Dale Farm, Oak Lane, Crays Hill, Billericay, Essex (Site 2). The requirements of the notice are to:

(i) Stop using the land for the deposit of hardcore and road scalpings;
(ii) Stop using the land for the stationing of residentially used caravans;
(iii) Remove all hardcore and road scalpings from the land; and
(iv) Recultivate the land by levelling and reseeding with grass seed.

The period for compliance with the requirements is, for step (ii), one month; for step (iii), one month; and for step (iv), two months. Compliance with step (i) is required "immediately this Notice takes effect".

The appeals are proceeding on the following grounds set out in section 174(2) of the 1990 Act. For Mr McCarthy these are grounds (b) and (g); for Ms Quilligan ground (g); for Ms Egan grounds (a), (c), (d) and (g); for Mr Sheridan grounds (d) and (g); for Mr Coyle ground (g); for Ms Sheridan grounds (f) and (g); and for Ms McCarthy ground (g). Since, other than in relation to Ms Egan's appeal the prescribed fees have not been paid within the specified period, the deemed applications for planning permission do not fall to be considered in relation to the other appeals.

Appeal 12 made by Ms Nora Berry under section 174 of the Act against an enforcement notice (Notice 5) issued by the same Council. The breach of planning control as alleged in the notice is without planning permission, unauthorised formation of hardstandings on Site 2. The requirements of the notice are to:

(i) Break up the hardstanding and remove all the resultant debris from the land; and
(ii) Recultivate the land by levelling and re-seeding with grass seed.

The period for compliance with the requirements is, for step (i), one month and for step (ii), two months.

The appeal is proceeding on the grounds set out in section 174(2)(g) of the 1990 Act, an appeal under ground (e) having been withdrawn at the Inquiry. Since the prescribed fees have not been paid within the specified period, the deemed application for planning permission does not fall to be considered.

Appeal 13 made by Ms Nora Slattery under section 174 of the Act against an enforcement notice (Notice 6) issued by the same Council. The breach of planning control as alleged in the notice is without planning permission, unauthorised formation of hardstandings on the land to the east of Dale Farm, Oak Lane, Crays Hill, Billericay, Essex (Site 3). The requirements of the notice are to:

(i) Break up the hardstanding; and
(ii) Recultivate the land by levelling and reseeding with grass seed.

The period for compliance with the requirements is, for step (i), one month and for step (ii), two months.

The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the deemed application for planning permission does not fall to be considered.

Appeal 14 made by Ms Nora Slattery under section 174 of the Act against an enforcement notice (Notice 7) issued by the same Council. The breach of planning control as alleged in the notice is without planning permission, the unauthorised

change in the use of the land for the deposit of hardcore and road scalpings on Site 3. The requirements of the notice are to:

(i) Remove all hardcore and road scalpings from the land; and
(ii) Recultivate the land by levelling and reseeding with grass seed.

The period for compliance with the requirements is, for step (i), one month and for step (ii), two months.

The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act.

Appeal 15 made by Mr David Sheridan under section 174 of the Act against an enforcement notice (Notice 8) issued by the same Council. The breach of planning control as alleged in the notice is without planning permission, the unauthorised change in the use of the land for the stationing of caravans and the parking of motor vehicles on Site 3. The requirements of the notice are to remove all caravans and motor vehicles from the land.

Compliance is required "immediately after this Notice takes effect".

The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act.

Appeal 16 made by the Gypsy Welfare Committee under section 78 of the Act against the refusal of the same Council to grant planning permission for the change of use of Site 2 from scrap yard to residential hardstanding and stationing of 22 mobile homes/caravans for an extended gypsy family.

Inspector's conclusions and recommendations

2. The Inspector, whose conclusions are reproduced in the annex to this letter, recommended that:

- in relation to Notice 4 (Site 2), the period for compliance with requirement (i) be inserted as "one day" and ground (b), (c) and (d) appeals be dismissed;
- with regard to Notice 6 (Site 3), the ground (b) appeal should succeed to the extent that the plan submitted by the Council be substituted for the plan originally annexed to the enforcement notice, and the reference to "hardstanding" in the requirements be corrected so as to read "hardstandings";
- the ground (a) appeals and the section 78 appeal be dismissed and the grant of planning permission refused;
- the ground (f) appeals against Notice 2 (Site 1) and Notice 4 be dismissed;
- the ground (g) appeals be allowed and the period for compliance with all the enforcement notices be extended to two years; and
- subject to the above corrections and variations, the enforcement notices be upheld.

3. For the reasons given below, except where otherwise stated, the Secretary of State agrees with the Inspector's recommendation to dismiss the section 78 appeal and uphold the Enforcement Notices as corrected and varied.

Procedural matters

4. The Secretary of State notes that the ground (e) appeal in Notice 5 was withdrawn at the Inquiry (IR 3).

Policy considerations

5. Section 54A of the Town and Country Planning Act 1990 requires that proposals shall be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan comprises the Replacement Essex and Southend-on-Sea Structure Plan 2001 and the Basildon District Local Plan 1998. The development plan policies applicable in this case are as stated by the Inspector (IR 45-52).

6. Material considerations include Planning Policy Guidance Note 2 (PPG 2): "*Green Belts*", and Circular 1/94: *Gypsy Sites and Planning.*

Preliminary Matters

7. For the reasons given by the Inspector in paragraphs 5-7 of his report, the Secretary of State agrees that the reference to "hardstanding" in the requirements of Notice 6 should be corrected so as to read "hardstandings". He also notes that Notice 5 refers, in the alleged breach of planning control, to the unauthorised formation of hardstandings (plural) but, in the requirements, refers to hardstanding in the singular. It is the Secretary of State's view that this is a slight error to which he could make a minor correction under the powers granted to him under section 176(1) of the 1990 Act, without causing injustice to any party. The Secretary of State has considered Appeals 12 and 13 on this basis.

8. The Secretary of State notes that Notice 8, the subject of Appeal 15, requires compliance "immediately after this Notice takes effect". He does not consider that this can be regarded as a period of time for the purposes of Section 173 of the Act which requires an enforcement notice to specify the period at the end of which the steps in the notice should have been carried out. He further takes the view that the failure to specify a period of time within the notice is a defect that it fatal to the notice, and he agrees with the Inspector (IR 17) that the notice is defective on its face and is therefore a nullity. He does not therefore propose to take any further action in respect of it or in relation to the appeal against it.

9. Similar considerations arise in respect of Notice 4, the subject of Appeals 5-11. This notice lists a number of alleged breaches which are to be remedied and sets out time periods for three of these actions. However, in respect of the first requirement, namely to stop using the land for the deposit of hardcore and road scalpings, the notice requires compliance "immediately this Notice takes effect". The Secretary of State notes that Inspector considers that it is possible to introduce a period for compliance for the other requirement within the context of the other specified periods for compliance and that he cites the case of *King & King v Secretary of State for the Environment [1981]* as

authority. However, the Secretary of State does not think that this case assists in the way the Inspector has opined. In that case the notice stated a date when it came into effect and a date when the breach was to be remedied. After appeal these dates had long passed, but the court found that by counting the days between the two dates, a "period" could be ascertained then read into the notice on appeal. That is not the situation here. As in the case of Notice 4, the Secretary of State considers that the absence of a period for compliance renders the notice a nullity, at least insofar as the first requirement is concerned. He has considered whether it is possible to sever the first alleged breach from those parts of the Notice having periods assigned to them for compliance, but has concluded that, given that the requirements are linked, he should regard the notice as a whole as a nullity. Accordingly, he does not propose to take any further action in relation to Notice 4, or the appeals lodged against it.

Consideration

The ground (b), (c) and (d) appeals in relation to Notice 4 (Site 2)

10. In the light of the above, these grounds no longer fall to be considered.

The ground (b) appeal in relation to Notice 6 (Site 3)

11. The Secretary of State notes that the ground (b) appeal against this notice was made on the basis that "the hardstanding was certainly there as it was a scrapyard". He also notes that the Council accepted that the northern part of this site has the benefit of a lawful development certificate and that they submitted a revised plan excluding this part of the site. With regard to the remainder of the site, the Secretary of State agrees with the Inspector that, save to the extent conceded by the Council, this ground of appeal should fail (IR 221).

Appropriateness of the developments

12. The Secretary of State notes that your clients accepted that the sites are wholly within the Green Belt and that the developments are inappropriate in the Green Belt. He also notes that they rely on the existence of very special circumstances to justify the developments (IR 222). Accordingly, the Secretary of State agrees with the Inspector that the main considerations in these appeals are as set out in paragraph 224 of his report but, like the Inspector, has considered firstly the gypsy status of the appellants.

Gypsy status

13. The Secretary of State agrees with the Inspector's conclusions for the reasons set out in paragraphs 225-227 of his report that the three sites should be viewed as gypsy sites being occupied by gypsies.

Whether there are very special circumstances to justify the developments

14. Like the Inspector, the Secretary of State considers that this is a balancing exercise in which any harm caused to the Green Belt by reason of inappropriateness, and any associated harm, must be weighed against the merits of the proposal (IR 228).

Harm to the Green Belt

15. The Secretary of State agrees with the Inspector for the reasons he gives in paragraphs 229-232 of his report that the development on each of the appeal sites has a significant adverse effect on the openness of the Green Belt and on the character of the countryside, contrary to development plan policies.

Location of the sites

16. The Secretary of State notes that the appeals sites are close to an authorised site. He agrees with the Inspector that they can fairly be described as in a semi-rural area but he accepts that it is likely that any further sites would need to be located within the Green Belt (IR 234). However, whilst he recognises that Circular 1/94 gives advice about small private sites, he does not agree with the Inspector's conclusion (IR 235) that there must be a question mark as to whether the presence of so many inter-related occupiers could lead to an insular, inward looking community. Although he accepts that in this case the use of the land for a large gypsy site would cause unacceptable harm to the Green Belt, he does not agree that, in principle, it is unacceptable for the appellants to wish to live together as an extended family.

Need for gypsy sites

17. The Secretary of State notes that Basildon District Council accepted that there may be an unmet need for sites in the District and that they are considering this through the Local Plan Review (IR 238). The Secretary of State agrees that the evidence seems clear that there are insufficient vacancies on Council owned sites. He agrees with the Inspector that dismissal of the appeals without any extension of the periods for compliance, would be likely to result in some or all of the families having to resort to unauthorised camping on an itinerant basis, leaving them open to legal action. The Secretary of State agrees with the Inspector that this undesirable eventuality is something to be weighed in the balance in this case (IR 239).

Personal circumstances

18. The Secretary of State agrees with the Inspector that the personal circumstances, in particular the need for regular health care and the opportunity for the children to continue their education at local schools should be accorded considerable weight in this case. (IR 242)

Compliance of Local Plan with Government Guidance

19. The Secretary of State notes the appellants' argument that the Local Plan did not comply with Government Guidance and that this in itself amounted to very special circumstances (IR 243). The Secretary of State agrees with the Inspector's conclusions on the compliance of the Local Plan with Government Guidance for the reasons set out in paragraph 243 of his report.

0. The Secretary of State accepts that the need for gypsy sites and the personal ircumstances of the appellants, and other occupiers, could amount to very special ircumstances capable of outweighing Green Belt objections in this case, but does not think t they can be regarded as very circumstances in this case unless and until they have been eighed against the significant harm caused to the openness of the Green Belt and to the haracter of the countryside and also against any other objections to the proposal. (IR 44).

he effect of the development on highway safety in, and on the character of, Oak Road and ak Lane

1. The Secretary of State notes that Oak Road is accepted to be sub-standard for the mount of traffic that it is currently carrying (IR 245) and that conditions for cyclists and edestrians are particularly unsatisfactory. The evidence is that, even without commercial ses on the sites, traffic movements resulting from the appeal proposals would be in the rder to 140 per day. For the reasons given by the Inspector in paragraphs 245-249 of his eport, the Secretary of State agrees that the highway objections weigh against the grant of lanning permissions (IR 250).

ther effects of the developments on the living conditions of nearby residents

2. The Secretary of State has had regard to the evidence submitted on this issue and grees with the Inspector (IR 257) that as matters stand, the matters set out by the nspector in IR 251 – 256 must, overall, weigh against the grant of planning permissions ather than in favour of them (IR 257).

verall Conclusion

3. The Secretary of State considers that the development is inappropriate development in he Green Belt and that, in addition to the harm caused by reason of inappropriateness, the evelopments have significant adverse effect on the openness of the Green Belt, and harm he character of the countryside in the area. He accepts that the shortage of authorised ites and the personal circumstances of the appellants are material considerations which eigh in favour of the proposals, but these need to be balanced against the harm to the reen Belt and the other objections to the proposal in terms of highway safety and garding the impact on residential amenity. The Secretary of State concludes that the onsiderations in favour of the proposal do not amount to very special circumstances that ould justify allowing inappropriate development in the Green Belt, or would indicate that e should determine the appeals other than in accordance with the development plan.

he ground (f) appeals

4. For the reasons given by the Inspector in paragraphs 258-259 of his report, the ecretary of State agrees that the ground (f) appeal against Notice 2 should fail. The round (f) appeal in respect of Notice 4 no longer falls to be considered.

he ground (g) appeals

5. For the reasons given by the Inspector in paragraph 261-266 of his report, the ecretary of State agrees that the compliance period in relation to the remaining notices notices 1, 2, 3, 5, 6 and 7, should be increased to two years.

varied by the deletion of "Two months" and the substitution of "Two years". Subject thereto, he hereby dismisses your client's appeal, upholds the enforcement notice and refuses to grant planning permission in respect of the application deemed to have been made under section 177(5) of the Act as amended, for the change of use of land as described in paragraph 1 above;

28. With respect to Appeal 16, for the reasons given above, the Secretary of State accepts the Inspector's recommendation. He hereby dismisses your clients' appeal.

Right to Challenge the Decision

29. I attach for your information a note setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this decision letter in relation to the section 78 appeal and within 28 days for challenges relating to enforcement notice decisions.

30. A copy of this letter has been sent to the Basildon District Council.

Yours faithfully,

Miss A Gerry
Authorised by the First Secretary of State
to sign in that behalf

in development plans but also that gypsy sites are not regarded as being among those uses of land which are normally appropriate in the Green Belt.

The Main Issues

224. There are accordingly three main considerations in these appeals. The first is whether there are very special circumstances to set aside the presumption against inappropriate development that applies in the Green Belt. The second is the effect of the developments on the character of Oak Road and Oak Lane, on highway safety there, and on the living conditions of residents in Oak Road. The third main issue is the other effects of the developments on the living conditions of residents in Crays Hill. However, before setting out my conclusions in relation to the Main Issues it is necessary for me to consider the question of gypsy status.

Gypsy status

225. Gypsies are defined, in section 24(8) of the Caravan Sites and Control of Development Act 1960, as amended by section 80(2) of the Criminal Justice and Public Order Act 1984, as persons of nomadic habit of life whatever their race or origin. There is also case law that assists in clarifying status in particular circumstances.

226. In the light of the evidence available to them I consider that the Council's acceptance that there were probably, amongst the occupiers of the site, some who were gypsies, but their refusal to accept the gypsy status of all of them, was a reasonable stance. To demonstrate the gypsy status of all the occupiers would have required far more evidence and could have substantially prolonged the Inquiry. It is possible that some of the many occupiers and potential occupiers might not be "gypsies". However, whilst it is necessary to consider the status of the individual appellants, it seems to me that, beyond that, it is right to adopt a common-sense approach to the question.

227. The occupiers of these sites, including the named appellants [54] were, I was told, members of a clan of Irish gypsies, the Sheridans [68] and the evidence given by and on behalf of the appellants, including by individual occupiers [94-105], and the questionnaires [54] would appear to be compatible with that contention. I conclude that the three sites should be viewed as gypsy sites being occupied by gypsies. With that in mind I turn to the Main Issues.

Whether there are very special circumstances to justify the developments.

228. This is a balancing exercise in which any harm caused to the Green Belt by reason of inappropriateness, and any associated harm, must be weighed against the merits of the proposal.

229. *Looking first at the harm to the Green Belt*, paragraph 3.2 of PPG2 advises that inappropriate development is, by definition, harmful to the Green Belt. In this case, however, the harm is more than that caused only by inappropriateness. The appeal site is within a fairly narrow wedge of Green Belt that separates Basildon from the two smaller towns of Wickford and Billericay and I agree with the Council that it helps to check the sprawl of these large built-up areas, safeguards the surrounding countryside from further encroachment, and contributes towards preventing other towns from merging into one another [117].

230. The importance of the area in Green Belt terms was recognised in the 1992 appeal decision [118], the inspector expressing the view, at paragraph 42, that the generally open area

fulfilled the valuable role of separating Basildon from other nearby settlements. He went on to say that he considered that an indiscriminate proliferation of development over the area would seriously jeopardise its ability to continue to perform that function. Furthermore, enforcement action was successfully pursued in relation to commercial uses at Dale Farm [122]. In that decision the Inspector made the point that the fact that the surrounding countryside is not particularly attractive does not diminish its importance in Green Belt terms.

231. Whilst there is a relatively small area with the benefit of a LDC, such a use, even if recommenced, would not have anything like the same impact on openness as the development of around 2.5 hectares of Green belt land which is clearly visible from the A127 trunk road. Moreover, whilst it is true that the appeal sites are, collectively, next to an authorised gypsy site [66]. the Council indicate that, when a decision was made, in 1996, to grant planning permission for 17 extra plots for gypsies, this was within an area defined by natural boundaries of trees and hedgerows [121]. I agree with their assessment that the very large gypsy site that has been created has a disproportionate effect on the Green Belt and the visual appearance of the area. [also 121].

232. The adverse impact upon the Green Belt can be seen at its greatest when all the appeals are considered together. Nevertheless, the development on each of the appeal sites has a significant adverse effect on the openness of the Green Belt, contrary to Local Plan Policy BAS S7(ii)(b). This adverse effect also harms the character of the countryside in this area, bringing the developments further into conflict with Structure Plan C2, and Local Plan Policies BAS GB2 and BAS S7(ii)(b).

233. Having identified the level of harm to the Green Belt I turn to the question of very special circumstances.

234. *With regard to the location of the sites* they are, as previously indicated, close to an authorised site and they can fairly be described as in a semi-rural area. In addition it is likely, because of Basildon's position, that any further sites would need to be located within the Green Belt.

235. However, even leaving aside the Green Belt, highway and amenity issues, dealt with elsewhere, this does not, it seems to me, necessarily make these sites to be preferred for such a use. Paragraph 19 of Circular 1/94 makes the point that private sites for settled accommodation are generally small, accommodating pitches for individual or extended families without on-site business activities. It goes on to make the point that small sites can often be less obtrusive. In these appeals there are, in my view, more occupiers and potential occupiers than can reasonably be described as an extended family. There is, in essence a clan occupying the appeal sites and, it seems, much of the authorised site [210] and, whilst weight was placed by the appellants on the advantages of a permanent base as a means of helping to integrate gypsies into society [for example at 69], there must, in my view, be a question mark as to whether the presence of so many inter-related occupiers could lead instead to an insular, inward looking, community.

236. *As to the need for gypsy sites,* the evidence shows a need for more pitches nationally [55-57]. Looking more locally, Basildon has increased the number of authorised pitches for gypsies from 50, the need identified in 1990 and achieved in the years following [131] to the present 106, some of which received planning permissions from the Council whilst others were allowed on appeal [130 and 132]. There were, in November 2002, 23 unauthorised sites containing 68 pitches, 26 of which were on the appeal sites. However,

seven of the unauthorised sites were, in practical terms, tolerated, because they did not have a significant impact on the Green Belt [also 130].

237. This is a good provision in comparison to any other District in Essex, and indeed the Region [133] and there was an understandable feeling that other authorities in the area should be doing more to share the responsibility of providing sites [134]. There was also a concern that the District was having to accommodate not only the natural growth of local gypsy families but also an influx of a large number of travelling families of Irish origin [129]. They argued, I believe fairly, that case law had established that it was not always possible to accommodate gypsies in their preferred locations [137].

238. Notwithstanding this, the Council accepted that the may be an unmet need, but argued that the Local Plan Review was the appropriate means of considering this [135]. That is a stance with which the appellants [64] and others [for example 197] did not disagree. However, the appellants were concerned as to what would happen in the meanwhile [64].

239. The evidence shows that, albeit for different and often understandable reasons, some appellants and other occupiers came from other sites, including authorised sites [for example 99 and 103 and the questionnaires referred to at 54]. However, the evidence also seems clear that there are insufficient vacancies on Council-owned sites in Essex to accommodate them [65]. Thus, it seems likely that dismissal of the appeals, without any extension of the periods for compliance, would be likely to result in some or all of the families having to resort to unauthorised camping on an itinerant basis, leaving them open to legal action [57 and 83]. This undesirable eventuality is therefore something to be weighed in the balance.

240. *Looking at personal circumstances*, there is not evidence as to the personal circumstances of all the occupiers and potential occupiers. Moreover, whilst the personal circumstances of the named appellants must, of course, be considered, these cannot be altogether isolated from the other occupiers, in that the sites are occupied by a clan, who are all related by blood or by marriage [68 and 196], and who can therefore be expected to give support to and receive support from others on the sites. A number of those who gave evidence referred to feeling safe there [95 and 103].

241. A number of other facts are clear, even if, because of the numbers involved, they can only be stated in a relatively general way.

242. First, there are some adults living on the site who might find it particularly difficult to return to a life on the road and who would therefore benefit from a permanent site. These include single parents, especially single mothers [68]. They also include those with particular health needs that require regular hospital visits or trips to the Doctor [see as examples 96, 97, 100, and 101]. This is, in my view, an important consideration. Second, a substantial number of children live on the site and, with a settled base, they would not only have more ready access to health care but would also have an improved opportunity to receive regular, and coherent, school education. This is also an important factor and one to which the Secretary of State accords great weight. Common humanity, let alone the Human Rights Act, and cases determined in relation to Human Rights legislation, to which I do not specifically refer but which I have taken into account, demands that considerable weight be accorded to these factors.

243. *The appellants also argued that the Local Plan did not comply with Government Guidance* [64] and, in submissions, propounded that this in itself amounted to very special circumstances. However, bearing in mind that it would probably be impossible to identify

any sites not within the Green Belt, a point upon which the appellants placed some reliance [64], and that to do so would itself run counter to Circular 1/94 (paragraph 13), it seems to me that the Council were entitled to take the view that this was one of those exceptional circumstances, foreseen by the Circular, where it was not possible to identify locations suitable for gypsy sites. As to Local Plan Policy BAS S6 and its requirement for applicants to submit a statement which demonstrates the family's connections with the District, I do not find this in itself inconsistent with seeking to establish whether the applicants are gypsies who reside in or resort to the area. Thus, I identify no conflict with Government Guidance.

244. Thus, I identify the need for further Gypsy sites, and the personal circumstances of the appellants, and other occupiers, as very special circumstances capable of outweighing Green Belt objections. However, these factors will need to be weighed against the significant harm caused to the openness of the Green Belt and to the character of the countryside.

The effect of the development on highway safety in, and on the character of, Oak Road and Oak Lane.

245. There was consensus between the two main parties' witnesses giving highway evidence that Oak Road was sub-standard for the amounts of traffic that it is currently carrying [74 and 147]. It is generally less than 3.5 metres in width [145] and with only a small number of passing places [171]. Whilst it is correct to say that, proportionately, the greatest increase in traffic generation over the past 15 years or so came in the period 1987 and 1992, with a smaller increase between 1992 and 2002 [149], the occupation of the appeal sites has had a significant effect on traffic generation. Indeed the appellants agreed with the Council that, even if there were no commercial uses on the sites, the additional traffic movements resulting from the appeal proposals would be in the order of 140 per day [74].

246. The nature of the recent traffic accidents in Oak Road suggest that at least some have arisen from the way that a vehicle was being driven as opposed to the nature of the road. However, that does not detract from the fact that the road is sub-standard and that conditions for cyclists and, bearing in mind the absence of footways, pedestrians, are particularly unsatisfactory [201]. I have carefully considered the proposals to improve Oak Road to a standard more suitable for the traffic flows that it now experiences [75]. However, it is uncertain as to whether the improvements could be achieved within a reasonable time-scale or indeed at all [147]. Additionally, even if land, and funding, were available to achieve the improvements suggested by the appellants, they would not altogether resolve the current unsatisfactory conditions (for example no footway is proposed). Moreover, even if current problems of litter and damaged verges could be overcome, it could not be achieved without the permanent loss of the semi-rural ambience that this minor road must have once enjoyed. As well as the additional noise and disturbance that residents along Oak Road would experience, the ambience of the lane would be altered from that of a semi-rural backwater to an urban access road, harming the character of the area.

247. It should also be borne in mind that, whilst Oak Lane is a private road, a public footpath runs along its length. Any scheme improving access to the appeal sites should in my view make provision for pedestrians seeking to use that footpath.

248. The appellants' highway consultant was instructed late in the day and did all he could in the time available. He expressed the view that to provide a slip road on to the A127 would be inordinately expensive. That may be right, but there were no estimates of costs and no

evidence as to what the occupiers might be able to afford. Importantly, the views of the County Council were not known. Nevertheless, for all that, I consider this the only real way in which the highway objections with regard to Oak Road could be overcome whilst, if coupled with the closure of Oak Lane to the north of the sites to all but pedestrians using the public footpath, it would at the same time reduce the impact of the appeal developments on the area to the north, including Oak Road.

249. Indeed, in that it would, logically, also provide access to the authorised site, it would reduce traffic flows in Oak Road. Additionally, in that restrictions on the size of vehicles would not then be necessary, it would not impede the provision of the yellow bus service [147] and might also mean that the Council could contemplate allowing businesses to be conducted from the appeal sites, as envisaged by paragraph 16 of Circular 1/94. This would then avoid the need for them to consider the scope for identifying a site or sites for business purposes in close proximity, as suggested in the same paragraph of the Circular.

250. At present, and as conditions stand, however, the highway objections weigh against the grant of planning permissions.

Other effects of the developments on the living conditions of nearby residents

251. As well as the noise and disturbance along Oak Road, and the change in character of that road, I was presented with a sorry catalogue of lawlessness and anti-social behaviour coincident with the arrival of the occupiers of the sites. This ranges from allegations of shoplifting, and car-burning, to fireworks being let off and car horns sounded at unsocial hours, to problems with litter and unpleasant behaviour outside the school and elsewhere. There has even been a murder in recent months. All this, and more, has clearly, and understandably, been distressing for local residents, who feel that the quality of their lives has been eroded. Indeed, although by definition it cannot be quantified, I was told that some residents would not attend the Inquiry because they felt intimidated [173 and 198].

252. In response, the appellants point out that such problems are nation-wide. They also argue that some occurrences referred to, for example the murder, involved occupiers of the authorised site though, when there is evidence that much of that site is now also occupied by members of the Sheridan clan, there is a limit to the value of that point save to say that removing the appeal sites will not necessarily remove all of these perceived problems.

253. Problems in and around the school may, it seems to me, diminish with the introduction of the yellow bus service, as may school attendance. The current walk to and from school, whether via Oak Road or Oak Avenue, is lengthy and unsafe for children. Not surprisingly, children from the site who attend the Primary School tend to be driven there and back. Partly because of the size of the vehicles involved, this can cause problems. However, if children no longer need to be driven to school by their parents, or other site occupiers, this might, in its turn, discourage other youths from attending the site.

254. There is a real problem with litter and, having walked the length of Oak Road, and down Oak Lane to the appeal site, the nature of that litter leads me to conclude that a significant proportion had been dropped, or dumped, by occupiers of the gypsy sites, whether authorised or not. However, I am relatively confident that this could be overcome, particularly if a satisfactory access could be provided to the A127 and the Oak Lane access to Oak Road closed to traffic. Problems on and in the immediate vicinity of the site might also reduce once regular refuse collection by the Council was resumed. Much, I am sure, could also be achieved by the occupiers themselves and here, as in some other aspects of behaviour, I accept that education might, over time, play its part.

255. I believe that it is also right to be concerned that some residents do not believe that there is a level playing field regarding obtaining planning permission [161]. They feel that they cannot obtain planning permission for modest developments, even where there were personal circumstances to support them, [203 and 211] whereas others, who are not local residents, can come into the area, buy land and, seemingly, receive preferential treatment. This, they consider, results in families who abide by the established planning processes being treated as second-class citizens [170 and, in essence, 214]. Each application must, of course, be considered on its own merits. However, in the determination of these appeals it is important to treat all affected parties fairly and to remember that it is not only the appellants and other occupiers of the appeal sites who have rights that must, so far as possible, be protected.

256. Concern was also expressed about the future of the Community School [176 and 200]. However, I note that the Head Teacher was supportive of the gypsy children seeking education at her school [69].

257. Overall, it is hard to know what weight to place upon these considerations. That is not because there are not real problems: I am convinced that there are. However, some are less obviously planning considerations that others; some may not be the responsibility, or entire responsibility, of occupiers of the sites, and in any event would be likely to be perpetrated by only a minority; and some may be capable of resolution. However, I believe that, as matters stand, these objections must, overall, weigh against the grant of planning permissions rather than in favour of them.

The ground (f) appeals

258. I agree with the Council that the ground (f) appeal in relation to Notice 2 (SITE 1) should only succeed were planning permission to be granted for the sites, or at least for Site 1, as the building would remain an inappropriate development in the Green Belt, even if reduced in size. I therefore conclude that this appeal should not succeed.

259. I also conclude that the appeal on ground (f) against Notice 4)(SITE 2) should fail, the argument put forward being an argument properly considered, and which I have considered, within the context of the ground (a) and (g) appeals.

The ground (g) appeals

260. I deal with the ground (g) appeals together.

261. I can understand the difficulties faced by the Council in seeking to uphold their development plan policies. However, in my view some of the compliance periods contained in the Notices are patently unreasonable. Even if the view is taken that Notice 8 is not a nullity, to require compliance in an instant, which is how the Council interpreted its meaning, is a nonsense. It gives an unfair impression of an authority that has don e more than many to provide sites for gypsies. Moreover, the circumstances, including the practical difficulty of where the occupiers of the sites might go, the real needs of many for health care, and the importance of enabling the children to receive regular education, must be given proper weight.

262. It is therefore important to set a compliance period that would cause as little disruption to the family life of the occupiers as is commensurate with upholding the rights of those affected by the development as well as the important objectives underlying planning policy, including Green Belt policy.

263. Whilst it would be wrong to reach a decision simply because of the fears of confrontation were eviction to be attempted [93] it is, I believe, also important to bear in mind the consequences of not allowing a sufficient time for alternatives to be sought and found. One consequence of too short a period for compliance could, it seems to me, be the transfer to other land in the vicinity, with the prospect of the whole process starting again. That would be in nobody's interests.

264. The Council oppose long compliance periods on the basis that this would amount to the grant of a temporary planning permission. I do not agree with that view. It should not be seen as a green light either for further development on the site or for others to come to the District and to occupy other Green belt sites. These developments in these locations bring with them real problems and, because of the objections and uncertainties that I have identified, it seems to me that it would be wrong to grant planning permission for all or for any of the sites, at least for the time being.

265. Indeed it seems to me that the grant of a planning permission on these sites should only be contemplated if the following circumstances were satisfied;

i) The Secretary of State accepted that there was a need for gypsy sites and considered that the Council should, within its District, make a further contribution to the need that exists in the area;

ii) The Council were, preferably through the Local Plan Review process, unable to identify any alternative site which would cause less harm to the objectives and purposes of the Green Belt;

iii) The provision of a satisfactory access from the appeal sites, and the authorised site, on and off the A127, together with the closure of vehicular access from Oak Lane to Oak Road;

iv) The Secretary of State reaching the view that the grant of permission for such a large gypsy site, especially within such a small community, would not be counterproductive in the sense of encouraging an inward-looking gypsy community unable and/or unwilling to integrate into the wider community.

266. If satisfied on points (i) and (iv), points (ii) and (iii) could take some time to establish. As I have already indicated it is, in any event, important not to disrupt the education of the children, or indeed the home life and health care of all the occupiers, beyond that which is necessary. Overall, I consider that a period for compliance of two years would be appropriate.

Conditions

267. Were the grant of planning permission to be granted at this stage the need for conditions would have to be considered. The Council and the appellants discussed the question of conditions, and the schedules at Document 22 were produced. In my view they would need to be supplemented, including with a mechanism by which an appeal would be deemed to have been lodged should the necessary approvals not be forthcoming from the Council, and by which the use of the site could be brought to an end if the necessary approvals were not sought or if any appeal were to be dismissed.

Recommendations

268. I therefore recommend, in relation to Notice 4 (SITE 2) that the period for compliance with requirement (i) be inserted as "one day" and that the ground (b), (c) (d) appeals be dismissed. The reasonableness of this period for compliance can then be considered within the context of the ground (g) appeals.

269. With regard to Notice 6 (SITE 3) I recommend that the ground (b) appeal should succeed to the extent that the plan submitted by the Council be substituted for the plan originally

annexed to the enforcement notice. In addition, the reference to "hardstanding" in the requirements should be corrected so as to read "hardstandings".

270. If Notice 8 (SITE 3) is not considered to be a nullity the question of a reasonable period for compliance with the only requirement of the Notice can be left to the ground (g) appeal.

271. Turning to the ground (a) appeals, and the section 78 appeal, I recommend that these be dismissed and the grant of planning permission refused.

272. With regard to the ground (f) appeals against Notice 2 (SITE 1) and Notice 4, I recommend that these should also be dismissed.

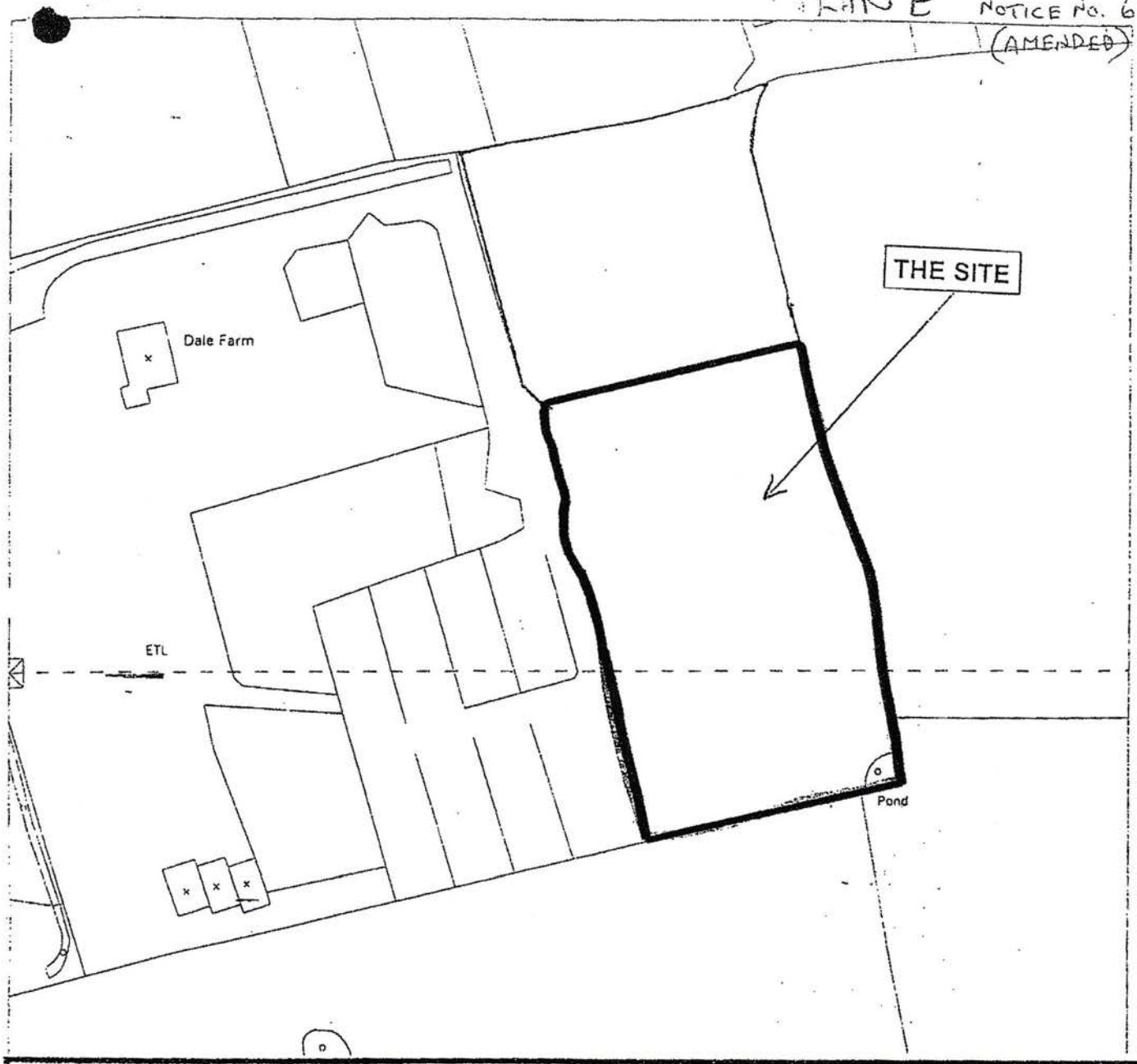
273. Finally, in relation to all the ground (g) appeals, I recommend that all these be allowed and that the period for compliance with all the enforcement notices be extended to two years.

274. Subject to the above corrections and variations I recommend that the enforcement notices be upheld.

Felix Bourne

FELIX BOURNE
Inspector

PLAN E NOTICE No. 6.
(AMENDED)



ENFORCEMENT NOTICE

WITHOUT PLANNING PERMISSION, THE UNAUTHORISED CHANGE IN USE AND DEVELOPMENT OF THE LAND.

North

LAND TO THE EAST OF DALE FARM, CRAYS HILL, BILLERICAY, ESSEX. (As outlined in red above)

SCALE : 1:1250

DRAWN BY : PH

DATE : 09.09.2002

This is the plan referred to in the attached Enforcement Notice dated 10/9/02. Issued in accordance with Section 172 of the Town & Country Planning Act 1990

A Bourne

Acting Solicitor to the Council

BASILDON DISTRICT COUNCIL
THE BASILDON CENTRE
ST MARTIN'S SQUARE
BASILDON
ESSEX SS14 1DL

This is the plan referred to in the First Secretary of State's
decision letter dated 13 May 2003
Reference APP/V/1505/C/02/1100008-9

MISS A GERRY
Authorised by the First Secretary of State to sign
In that behalf